



October 12, 2001

Ms. Traci S. Berven
Assistant City Attorney
City of Killeen
402 North 2nd
Killeen, Texas 76541-5298

OR2001-4630

Dear Ms. Berven:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153249.

The City of Killeen (the "city") received a request for videotapes, police reports and other information relating to a specified case number. You inform this office that the city has released the incident report, arrest report, and copies of complaints. You claim that a responsive videotape is excepted from disclosure under section 552.119 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

Section 552.119(a) of the Government Code excepts from required public disclosure "a photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure," with certain exceptions that do not appear relevant here. A photographic image of a peace officer may be released only if the peace officer gives written consent to the disclosure. Gov't Code § 552.119(b). In Open Records Decision 502 (1988), this office held that there need not be a threshold determination that release of a photograph would endanger an officer before the statutory predecessor to section 552.119(a) could be invoked. You represent to this office that the submitted videotape depicts seven to eight police officers, each of whom is a peace officer under article 2.12 of the Code of Criminal Procedure. Having reviewed the videotape, we conclude that unless these officers have given their written consent or are no longer living, the portions of the videotape that depict their photographic images must be withheld from disclosure under section 552.119. *See also* Open Records Decision No. 536 (1989) (provision that protects police officer's photograph ceases to apply after death of officer). The remaining portions of the videotape are not excepted from disclosure and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

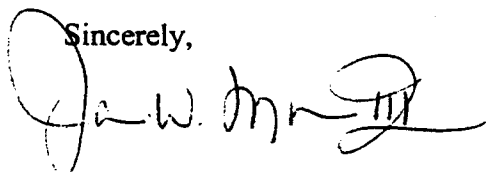
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 153249

Enc: Submitted documents

c: Mr. Paul M. Langdon
1110 Indian Trail, #81
Harker Heights, Texas 76548
(w/o enclosures)